

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

TARRANCE WHITLOCK §
v. § CIVIL ACTION NO. 5:14cv94
WILLIAM STEPHENS, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
REGARDING TDCJ HEALTH SERVICES DIVISION'S MOTION TO DISMISS

The Plaintiff Tarrance Whitlock, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court ordered the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. Plaintiff sues TDCJ Director William Stephens, Warden Dawn Grounds, Access to Courts Administrator Vickie Barrow, Telford Unit law librarian Chequita Dunbar, Dr. Reginaldo Stanley, Telford Unit practice manager Cathy McPeak, Jamie Barker, and the TDCJ Health Services Division.

The Health Services Division filed a motion to dismiss arguing it is an agency of the State of Texas and is immune from suit under the Eleventh Amendment. Plaintiff filed a response stating he did not intend to sue the state or an agency of the State, but intended to sue the head of the TDCJ Health Services Division who affirmed the denial of Plaintiff's Step Two grievance.

The Magistrate Judge issued a Report recommending the Health Services Division's motion to dismiss be granted. The Magistrate Judge stated the Health Services Division is a sub-unit of the Texas Department of Criminal Justice, an agency of the State of Texas, and is itself immune from suit under the Eleventh Amendment. Although Plaintiff expressed intent to sue the head of the Health Services Division for affirming the denial of his grievance, the Magistrate Judge concluded

such a claim would fail because the mere fact of denying Plaintiff's grievance does not set out a constitutional violation. Geiger v. Jowers, 404 F.3d 371, 373-74 (5th Cir. 2005). The Magistrate Judge thus determined allowing Plaintiff to amend his complaint would be futile.

In his objections, Plaintiff again asserts he intended to sue the state official who affirmed the denial of his Step Two grievance and signed the grievance response. Plaintiff contends the Eleventh Amendment does not shield this official, whom he alleges had personal knowledge of the alleged constitutional violations through receipt of the grievance.


The Magistrate Judge properly determined a lawsuit against the TDCJ Health Services Division is barred by the Eleventh Amendment. The Magistrate Judge was also correct in concluding the fact an official with the Health Services Division signed a denial of Plaintiff's Step Two grievance does not give rise to personal liability on the part of that official. Rios v. City of Del Rio, Texas, 444 F.3d 417, 425 (5th Cir. 2006); Perkins v. Terrell, civil action no. 08-cv-1906, 2010 U.S. Dist. LEXIS 26759 (W.D.La., March 2, 2010). Plaintiff has not shown an amendment to add such a claim would be anything other than futile. His objections are without merit.

The Court has conducted a careful *de novo* review of those portions of the Magistrate Judge's proposed findings and recommendations to which the Plaintiff objected. *See* 28 U.S.C. §636(b)(1) (district judge shall "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.") Upon such *de novo* review, the Court has determined that the Report of the Magistrate Judge is correct and the Plaintiff's objections are without merit. It is accordingly

ORDERED the Plaintiff's objections are overruled and the Report of the Magistrate Judge (docket no. 29) is ADOPTED as the opinion of the District Court. It is further

ORDERED the motion to dismiss filed by the TDCJ Health Services Division (docket no. 24) is GRANTED and the claims against the Health Services Division are DISMISSED without prejudice.

So ORDERED and SIGNED this 17th day of September, 2015.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE